Final Outline

Regina v Dudley & Stephens (cannibalism)
Rule of Law: a man cannot kill an innocent, even if doing so is necessary to save the man's own life
The defense of necessity cannot be applied in this situation (where Dudley and Stephens killed Parker, an innocent man.
The judge in this case says the relationship between the law and morality. Morality would be to sacrifice yourself so they should pay the piper.
Four theories of punishment:

1. Deterrence

a. General
b. Specific

2. Rehabilitation – reforming the defendant through programs to make them a contributive member of society.
3. Incapacitation – keep the defendant apart from society.
4. Retribution – the punishment equals the crime.

Dudley case is a special verdict case. Where the jury is asked extremely specific questions but guilty or not guilty is up to judge.
Brooks is not indicted because he did not participate in the conspiracy of the killing which Stephens was waiting. Stephens ascended to the plan, Brooks did not, he just ate after the fact.
Case-in-chief defense (raise Reasonable doubt, e.g. OJ Simpson case. He did not have to raise an affirmative defense.
Affirmative defense (committed crime for a good reason; e.g. Dudley case)

Rule of Law
In Williams it is referred to but not defined. In Williams, the rule of law is not the same as in our case briefs. IT means we are ruled by laws, not men.
The rule of law embraces the concept of legal equality.
Legal Equality – all persons, regardless of social status, religion, political leanings, are granted the same rights & governed by the same laws, applied fairly and equally to all.
Legality – no crime or punishment without law already written, making conduct unlawful.
Limiting discretionary power of government

- Checks and balances, separation of powers (legislative, judiciary and executive)
- Jury nullification
- Void-for-vagueness

1. The need to give citizens fair notice what is criminal.
2. The need to limit discretion of the government.

People v. Williams (juror dismissed)
Penal Code sec 1089: court can order a juror discharged if the juror "dies or becomes ill or upon other good cause shown to the court if found to be unable to perform his duty or requests discharge and good cause appears therefore (sic)."
Statutory rape is a clear-cut case and the law is specific and clear.
A jury of your peers is a check of the government from becoming tyrannical.

California supreme court says that jury nullification could find someone guilty even if you harbor an innocent doubt. Jury nullification actually only works one way, because you can appeal a guilty verdict but cannot retry someone.
Elements of US crime:

1. Voluntary act that causes social harm Actus Reus
2. Prohibited mental state Mens Reus
3. Causation
4. Concurrence

Actus Reus
A voluntary act that causes the crime (Actus Reus)
3 potential defendants

- D1 Thinks about killing his brother. He is mad at his brother and wants to see his brother dead. (Nothing)
- D2 wants to see his brother dead, thinks about how he could kill his brother and begins to gather the tools necessary to kill his brother. (Maybe attempted murder)
- D3 wants his brother dead, thinks about killing his brother, then without any provocation from his brother, takes a loaded gun, shoots his brother in the heart, and kills him. (Murder)

The argument is that writing in a journal is an action, but it results in no social harm.
Sec 2.01 MPC sleepwalking and conduct under hypnosis.
Martin v State (drunk dude pulled from home)
Rule of Law: Actus Reus requires a voluntary act that causes social harm. M did not voluntarily leave home and appear in public.
State v. Decina (epileptic)
Rule of Law: Actus Reus requires a voluntary act that causes social harm. D hit and killed the girls involuntarily, due to a seizure, but D voluntarily decided to operate a car when he knew he could have a seizure.
Case in Chief defense, poke holes in prosecution. In Decina, it was involuntary so one element cannot be proven then not guilty.
A lot of times a criminal case comes down to culpability. The gut Reaction from the case.

- A Failure to act is generally not actionable, it can only satisfy the Actus Reus requirement if there is a special relationship.

Three parts of Actus Reus requirement

1. A voluntary act or failure to act when there is a legal duty to act
2. That causes
3. Social harm

When individuals have a legal duty to act:

1. Special relationship
2. Contractual
3. Voluntary assumption of care
4. CReation of the risk
5. Statuatory duty.

People v. Beardsley (party for days woman dies of O/D)
Rule of Law: The kinds of relationships that give rise to a legal duty to act are when "a person who sustains another through the legal relation of protector, as husband to wife, parent to child, master to seaman, knowing such person to be in peril of life,

willfully or negligently fails to make... efforts to rescue him." Here, there was no such special relationship.

State v. Fugate (robbing garage)

Rule of Law: "an intent to kill may be presumed where the natural and probable consequence of a wrongful act is to produce death, and such intent may be deduced from all the surrounding circumstances, including the instrument used to produce death, and the manner of inflicting a fatal wound."

In 1985 the SC held that this violated the 14th amendment

4 elements of US crimes

1. Voluntary act that causes social harm Actus Reus
2. Prohibited mental state Mens Reus
3. Causation
4. Concurrence

Denoting moral fault is the Culpability approach

Elemental approach - Specifically defined mental state

The same term in different statutes may be interpreted to mean different things.

- The MPC defines Mens Rea
    1. Purposely
    2. Knowingly
    3. Recklessly
    4. Negligently

Deadly Weapon Rule legal shortcut to Mens Rea

- The jury may inter an intent to kill if the D intentionally used a deadly weapon aimed at a vital part of the human body.
- Definitions of "deadly weapon":

Anything designed, made or adapted for the purpose of inflicting death or serious bodily injury.

MPC: animate or inanimate substance that, as used or intended, is capable of causing death or serious bodily injury.

United States v. Jewell (smuggling weed)

Rule of Law: If D has his suspicion aroused but deliberately avoids learning the truth s/he is deemed to have knowledge. "He suspected the fact, Realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This and this alone is willful blindness. It requires in effect an effort to cheat the administration of justice. Any wider definition would make the doctrine of willful blindness indistinguishable from the civil doctrine of negligence in not obtaining knowledge."

- Squib: Global-Tech Appliances, Inc. V. SEB S.A.
- Facts: SEB invented, patented and sold fryer in US. GTA subsidiary P did find SEB patent, copied fryer, sold to S and others selling in U.S., even after SEB sued S & S notified P of suit.
- Court Held: The doctrine of willful blindness can be used to establish the mental state of knowledge. Willful Blindness means: 1. the defendant must subjectively believe that there is a high probability that a fact exists and 2. the defendant must take deliberate actions to avoid learning that fact.

People v. Scott (kills wrong person)

Rule of Law: When D intends to kill A and instead kills B, the transfers D's intent to kill An over to B so D can be held liable for murdering B.

Defendant was aware of the risk of killing someone other than the intended victim. Bad aim defendant charged with attempted murder and murder

Good aim defendant murder and reckless endangerment.
People v. Birreuta
D, with intent to kill V1, shoots and kills V1 (the intended victim). Bullet goes through V1 and also kills V2 (unintended victim). Murder for the V! Involuntary manslaughter for V2 because there was no intent).
The Actus Reus is the breaking and entering the Mens Rea is the felony.
Larceny (theft): trespassory without intent taking and carrying away of personal property of another with intent to permanently deprive.
Receiving stolen property: receiving property with knowledge that the property is stolen.

- General Intent Crimes
- GI: state of mind of recklessness or negligence, e.g.: Reckless endangerment, Negligent homicide
- Battery: the intentional application of unlawful force upon another. GENERAL INTENT
- Rape: sexual intercourse by force or thReat of force without the other person's consent.

People v. Atkins (guy burned brush after thReat day before) (voluntary intoxication def)
Section 22(a) : No act committed by a person while in a state of voluntary intoxication is less criminal by Reason of his or her having been in that condition.
(b) evidence of voluntary intoxication is admissible solely on the issue of whether or not D actually formed a required specific intent, or, when charged with murder, whether D premeditated, deliberated or harbored express malice aforethought. This means that if you are drunk you still get charged with murder but possibly can claim that you lacked the Mens Reus to be able to premeditate, deliberate or harbored express malice aforethought.
Does arson require SI or GI?
Arson is defined as "any person who willfully (intentionally) and maliciously sets fire to or burns or causes to be burned any forest land guilty of arson"
The only mental state is the Actus Reus for arson therefore general intent.
Holding: No because arson requires only GI
Rule of Law: A defendant can not introduce evidence of voluntary intoxication to negate the existence of general criminal intent.
Morissette v. United States (Salvaged bomb parts) (conviction reversed, no Mens Rea)
There are 2 types of strict liability offenses:
Public welfare offenses, involve the factors in Morisette (speeding as example)
Traditional strict liability offenses – adultery, bigamy, statutory rape
General intent is just you intended to do the act
In criminal law, general intent and specific intent are two important concepts that describe a defendant's state of mind when committing a crime:
General intent
The defendant intended to commit an act, but may not have known the act was illegal or intended the consequences that resulted. For example, if someone rams another car after a road rage incident, that's considered general intent, even if they didn't intend to cause an accident. General intent crimes include battery, driving under the influence, and rape.
Specific intent

- Specific intent crimes

The defendant intentionally commits an act with a clear, predetermined purpose or goal in mind. These crimes require a higher level of culpability.

- General intent crimes

The defendant intends to commit a criminal act but doesn't necessarily require proof of a specific desired outcome beyond the act itself.

SPECIFIC INTENT CRIMES:

Aggravated Assault, Burglary, Conspiracy, Embezzlement, First degree premeditated murder, Forgery, Larceny, Conspiracy, solicitation

GENERAL INTENT CRIMES: arson, battery, theft, DUI, rape, assault, burglary, larceny, attempt, kidnapping, false pretenses, child sexual abuse

specific intent crimes will require a prosecutor to prove that a defendant had both the desire to commit the act as well as the knowledge or intent that committing the act would achieve the end result.

The distinction between specific and general intent crimes is a fundamental concept in criminal law. It influences: The charges brought against an individual, The strategies employed in their defense, The level of culpability, Charging decisions, and Punishment and sentencing.

General Intent - general intent crime will only require a prosecutor to prove that a defendant had intended to perform the act in question and that the act is one that is prohibited by law or is illegal. In other words, you can be charged and convicted of a general intent crime simply by committing an act that is considered both illegal and a crime under the law.

People v Navarro misktake of fact must be reasonable

People v Marreromisreading of statute (cop with gun) must come from someone with authority that interpreted the law wrong and told you.

The Mens Rea requirement – what mental state is required?

Generally the common law requires one of 4 mental states be proven depending on crime committed

1. Specific Intent – is one in which the definition of the offense
    a. Requires proof of an intention by the actor to perform some further act or achieve some further consequence beyond the conduct or result that constitutes the social harm of the offense.
    b. Requires proof of some special motive for the conduct **OR**
    c. Provides that the actor must be aware of a statutory attendant circumstance
2. General Intent – only requires that the defendant intended to commit an act that is prohibited by law (intent of the act's result is irrelevant)
3. Strict Liability Crime - requires that the defendant voluntarily committed the Actus Reus
4. Malice crime requires the defendant intentionally or recklessly caused the social harm prohibited by the offense

2 types of mistakes

- Mistake of fact = mistake about a factual circumstance that relates to an element of the offense

(Doesn’t make a lot of sense) (just memorize)

In order to know if a mistake of fact has happened, you need to look first at if it’s a general intent or specific intent crime? Or strict liability?

Mistake of fact is a case in chief defense because it attack a particular element of the offense. The mistake of fact has to be relevant to the mental state needed for the offense.

Case-in-chief defense: attacks Mens Rea element (mistake of fact negates Mens Rea necessary for commission of offense?)

- Mistake of law = mistake/misunderstanding regarding the law with which one has been charged with violating. (Ignorance of the law is no excuse) (Very unusual)

Mistakes of Law:
General rule: Ignorance of the law is not excuse.
3 exceptions:

- Defendant Reasonable relied on an official interpretation of the law (Marrero) it is an affirmative defense, not a case-in-chief defense.
- D's mistake of law negates the Mens Rea required for commission of the offense.
- Statute setting out criminal offense violates D's due process rights (Lambert)

Is it general intent, specific intent or strict liability?
The rule for Specific Intent crimes is that D is not guilty if his mistake of fact was honest and negates Mens Rea element.
D grabs Vs black umbrella mistakenly thinking umbrella is hers. A Reasonable person would have Realized that Vs umbrella wasn't Ds umbrella because Ds umbrella was brown, not black , but D was in a hurry and wasn't paying attention to color. D is charged with larceny.
The rule for General Intent crime is D is not guilty if mistake of fact was honest and Reasonable and negates Mens Rea element (Specific does not require Reasonable)
A man sees a woman across a bar who he honestly believes is chocking (discolored face and appears not to be able to bReathe). A Reasonable person would have tried to talk with her to see if she could speak, but he runs over and gives the Heimlich maneuver without speaking with her. He is charged with battery.
Lambert v California felon registration laws (LA with felony) violation of due process, must have fair notice
State v Bryant sex offender different than Lambert because every state has the law.
Strict liability does not require Mens Rea. Not a defense.
What do we look for in the statute to determine whether its strict liability. Look to Morissette. (Scrapper getting bomb parts)
It is common for a statute to reference another statute
Section 265.20. 265.02 does not apply
265.02 references 1.20 which references 2.10 to get your definition of peace officer
The defendant has to show that who counted as a peace officer was correct at the time that he made that determination 265.20 and 1.28 were later declared invalid.
Megan's Law 2 types

1. NC as example State makes a determination of future dangerousness
2. Conn. As example No individualized determination. SC held does not violate due process

3. Causation
Commonweath v Rementer (beat up lady hit by bystardards)
Causation – but/for test. Whether the defendant was the actual cause or a cause in fact of the actual harm.

- But for the defendants actions would the social harm have occurred?

- But for Rementer beating up Mary Berry would the social harm have occurred? No, she would not have went for help from Machelli which means that Machelli would not have ran her over.
- Hypo D1 shoots V. At the same time, D2 shoots V. If D1's shot to the heart was the only thing acting upon V, V would have died in 5 hours. If D2's shot to the head was the only thing acting upon V, V would have died in 2 hours. Instead, because of both the shots, V dies in 5 minutes.
- But for D2's shooting in the head would the victim have died when he did? No. Therefore D2 is an actual cause of the death.
- Hypo: D1 shoots V in the heart. At the same time, D2 shoots V in the head. If just D1's shot, V would have died in one hour. If just D2's shot to the head died in one hour.
- But for D1 or D2's shooting would the victim have died when he did? Yes. Then they are not the actual cause. In this case the but/for test doesn't work.

But-For Test: But for the defendant's actions would the social harm have occurred? Also need to know if they are the proximate cause.

Substantial Factor Test: If D's act was a substantial factor leading to the social harm, D= an actual cause. Yes

Modified But-For Test: D is an actual cause if but for D's act, the social harm would not have occurred when and as it did. No. Now we are in actual cause land. Using this both D1 and D2 can be held to actual cause.

- Intervening cause analysis: sequencing, how did this relate to the defendant's voluntary act but before the social harm
- Proximate cause and intervening cause
- Intervening Cause: act or event which (1) occurs after D's voluntary act and before social harm, & (2) contributes causally to harm.
- How is the intervening cause related to the voluntary act of the defendant.
    - Responsive/dependent IC (intervening cause) IC in response to or dependent upon D's voluntary act
    - Coincidental/independent if the IC would have occurred regardless of D's voluntary act

Thabo Meli v Reginam throwing guy off a cliff is mens rea for murder

To determine whether D caused the social harm in question, ask:

1. Bur for D's act, would the social harm have occurred when it did? (when answer is no = D is actual cause).
2. Is it fair and just to hold D criminally liable (whether D's acts were so remote or attenuated from actual result that it would unfair to hold D criminally liable; whether D was proximate cause of social harm; was the social harm foreseeable?)

In Skufka – foreseeability was of some kind of harm rather than the actual harm that occurred.

Beardsley case women acting in a way that is not caring of other people, particularly children.

Cheeks case – the voluntary act was the stabbing, the intervening cause is the pulling out of tubes which would not have happened without being operated on (dependent) therefore D can be charged.

Unless it is bazaar or unusual is the text for intervening cause

- Concurrence

Temporal concurrence and motivational concurrence

Motivational concurrence is a concept in criminal law that refers to the connection between a guilty mind and a guilty act (Mens Rea and Actus Reus)

Concurrence is rarely an issue

Striking victim over the head is the voluntary act and satisfies the Actus Reus
The act of throwing the guy over the cliff was the act that caused the social harm. If we use the throwing as the Actus Reus then

Criminal Homicide

Murder and Manslaughter

Key distinction:

- Murder = unlawful killing with malice aforethought
- Manslaughter = unlawful killing without malice aforethought

Degrees of murder and manslaughter

- Default verdict is 2nd degree murder
- 1st degree murder = aggravated orm
- Voluntary manslaughter = mitigation based on partial defense
- Involuntary manslaughter = requires "criminal negligence"

Malice aforethought

Legal term of art

Can be shown in 4 different ways:

1. An intent to kill (express malice)
2. An intent to seriously injure (implied malice)
3. A depraved heart murder (implied malice)
4. A felony murder (implied malice)

First degree murder = Aggravated form of murder

Ways to show aggravation:

1. Murder involved "premeditation" and "deliberation"
2. Murder committed using means specified in 1st degree murder statute
3. Murder occurred during commission/attempted commission of enumerated felony

Gilbert v State

*****State v Bingham***** (guy and girl strangers hitchhiking, girl strangled 3 days later) heat of passion 2nd degree

Alternative Rule *****(People v. Anderson)***** (Duress is not a defense to killing an innocent person)

- Planning activity (e.g. bring the murder weapon to the scene).
- Motive (having a Reason to kill V)
- Manner of killing (wounds deliberately made to vital body parts, not frenzied slashing suggesting impulse killing.)

For murder the default is 2nd

Voluntary Manslaughter – mitigation based on partial defense

People v Ambro (guy killed wife from words)

Doctrine of provocation (voluntary manslaughter)

- Doctrinally tReats D as having acted without malice aforethought (Mens Rea for murder)
- Actually, a culturally-sanctioned sympathy translated into mitigation of culpability
- Three approaches:

- early common law (categorical test) (Ambro)
- modern "Reasonable man" (later "Reasonable person") test
- MPC: defense of extreme mental or emotional disturbance.

In a way is this is culturally sanctioned honor killings

LAP categories at early common law:

- Aggravated assault or battery

- Obsesrvation of a serious crime against a relative (not illinois)
- Illegal arrest
- Mutual combat
- Husband catching wife in the act of adultery

LAP – Legally adequate provocation
Violence against women act of 1994 focused on gender based violence especially domestic violence.
Important themes from Ambro,
Relative leniency toward intimate violence.
State v Brown – kid died from repeated abuse. Premeditation requires cool head
Gilbert v State case totally opposite sympathies and outcomes (wife wanted to die, but huy convicted)
One exception to the leniency towards intimate violence is when women kill their batterers.
Depraved heart murder

- Generally tReated as 2nd degree murder
- D acted with gross recklessness and extreme indifference to human life (D Realized his actions cReated a substantial and unjustified risk of death and committed actions anyway
- Distinguish from unintentional killings involving simple recklessness or gross negligence (=involuntary manslaughter)

Commonwealth v Malone Russian Poker case
Firing a gun into a crowd of people is analogous in gross recklessness. The awareness of the risk of murder and the decision to do it anyway. With involuntary manslaughter, there is no awareness.
Involuntary Manslaughter -→ Depraved Heart → 1st degree murder are on a continuum
People v Knoller satan dogs case, disregard for human life 2nd degree
*****Welansky***** (club owner that club burned)
There are doctrinal issues and also issues that Welansky was not even there even though he controlled the business. Larger question – the difference between reckless conduct or conduct that is negligent or grossly negligent.

- Negligence is usually defined as (in criminal law) a substantial risk to others that others would have been aware of.
- Gross negligence is the degree of unjustifiable and the degree of substantial risk of danger to other wheReas an ordinary person would have been aware of. It was a gross deviation from the normal person.
- Wanton and reckless means the defendant was aware of a substantial and unjustifiable risk and disregarded it.

Recklessness and negligence
Normal definition of recklessness: D was aware of a substantial and unjustifiable risk and consciously disregarded it.
Normal definition of negligence: D was not aware of risk
*****State v Williams***** (native americans with baby tooth)
If an ordinary or Reasonable person would have taken the baby to the doctor then that is the standard.
Court is establishing in this case where a failure to act dismisses the Ds from legal consequences. Here the child is a protected class with the parents duty of care to the child legally.

Defense to a failure to act is financially incapable of acting then you cannot hold them responsible. The court also makes a point to say they are physically and financially able to get the child to the doctor.

Depraved heart murder v involuntary manslaughter v tort

- Varies by jurisdiction
- In jurisdictions where criminal negligence = gross negligence
- Was this ordinary negligence? (yes: tort; no: consider next question)
- What here subjective awareness of the risk of death or "conscious disregard"? (Yes: depraved heart; No: Involuntary manslaughter)

Felony murder rule

- D liable for murder even if they didn't intend to kill, didn't intend to commit Great bodily injury and didn't act with gross recklessness/extreme indifference to human life (I.e. the other 3 ways we can establish the Mens Rea for murder, malice aforethought)
- Strict liability for death that occurs during commission of felony.

Two ways the FMR applies:

- Killing that occurs during (attempted) commission of felony enumerated in 1st deg murder statute.
- Killing that occurs during (attempted) commission of unenumerated felony, which would be considered 2nd deg murder (controversial/problematic way)
- With regard to 2nd deg murder, 4 primary limits:

1. Inherently dangerous felony limitation
2. The Res Gestae requirement
3. The merger doctrine
4. Third party killings/agency rule

Because there isn't an intent to kill, you can't Really say they are culpable for the social harm of killing which was an accident.

FELONY MURDER IS STRICT LIABILITY

Your culpability rises when the felony is inherent dangerous. Manufacturing meth is dangerous.

The danger that because there is a dead body, you will always think that whatever it was is inherently dangerous.

Ford is distinguished from Hines because in Ford there was no evidence that there was an apartment below him and that there was in a person in it. In Hines, there were hunters about and his own party was not all with him.

Mistake of fact rules:

Specific intent crime with mistake of fact. The mistake must negate the Mens Rea with General intent but add h2nd deg Felony Murder Rule Limitations- The Res Gestae requirement: tighter causal link (e.g., death Res Gestae Requirement

- Temporal and geographic proximity between the felony and the homicide (I.e., felony murder rule applies if the killing occurred during the commission or attempted commission of a qualifying felony)
- Causal link between felonious acts and the homicide
- Some jurisdictions: only but-for causation;
- Other jurisdictions must be the result of acts in furtherance of the felony.

Merger Doctrine

- Felony murder rule is not applicable if the underlying felony is an integral part of and included in fact in the homicide.

- Underlying felony supporting felony murder charge must be an independent crime, not the killing itself.
- If the felony is not independent, then it merges with homicide and cannot be used as the basis for a FM conviction
- Merger doctrine inapplicable if the predicate felony has an independent felonious purpose.

Threat of immediate violent injury = assaultive.

Watkins was in fear of immediate violent injury is what Rose wants to argue because then the merger doctrine applies. You have to intend physical harm or the victim has Reasonable apprehension to believe that they are about to receive immediate violent bodily injury. Honest and Reasonable.

Merger doctrine is counterintuitive – if you say that you came with intent to harm but not kill then it merges and you cannot go for 2nd degree murder (FMR) - prosecutor can go for voluntary manslaughter or whatever.

Usually if the prosecutor is going for FMR to get to second degree murder because they couldn't charge without.

The Mens Rea was for battery.

Contreras case referred to in the Rose case.

Not Enumerated:

Abstract: is it assaultive? Yes, so it merges and no FMR.

In case by case: is it assaultive? No, so it does not merge, therefore FMR can be charged. But you can argue that it is not assaultive (Prosecution will argue that he wasn't trying to do anything assaultive, defense will argue the opposite)

Enumerated:

Abstract or case by case it is not merged and it is automatically first degree murder (1st degree by enumerated statute)

Hypo 3: Same as hypo two using Independent Felonious Purpose

1. Does the felony involve assaultive behavior?
   a. If so, it merges and the FMR is not applicable.
   b. Is there an independent felonious purpose? If so, then the FMR may be used despite assaultive aspect to the felony.
2. If an independent felonious purpose exists

In the abstract: yes merger /Case by case: yes

Proximate cause theory means that any deaths that occur is a proximate cause of the felony.

In shield cases, where a defendant is using an innocent to shield their getaway, then any death from that is co-felons' responsibility. Reasonable, natural and probable consequences.

If a defendant initiates a gunfight, under depraved heart you might be able to get him for other killings.

Provocative act murder is an offshoot of depraved heart murder in California.

The self-defense killing of a co-felon by the jeweler is a justifiable killing and not a crime.

DIFFERENCE BETWEEN MANSLAUGHTER AND 2ND DEGREE MURDER IS MALICE AFORETHOUGHT

You should be able to explain that all crimes have 4 elements.

3 Mens Rea: strict liability, general and specific

Morisette v United States whether strict liability

People v James cooking meth – inherently dangerous felony, 2nd degree murder
Hines v Statefelon shot friend thinking it was turkey, inherently dangerous (only in this case)
Independent Felonious Purpose

Does the felony involve assaultive behavior? If so, it merges, and FMR is inapplicable

Is there an independent felonious purpose? If so, then FMR may be used despite assaultive aspect to the felony.If an independent felonious purpose exists, then even if the felony would otherwise merge with homicide (ruling the FMR not applicable), then felony is said not to merge and the FMR can apply

Hypo

D breaks & enters V's house with intent to beat V badly and ends up killing V. D is charged with FM based on the underlying felony of burglary. Burglary is committed when a person breaks and enters a dwelling with the intent to commit a felony within. Does burglary merge with the homicide?

In the abstract (by judge): NO merger

Case-by-case (by jury): YES, merger

People v Bodely guy killed pedestrian after robbing bank, temporary safety rule

People v Stamp does FMR apply guy dies from heart attack during robbery, yes, does not need to be foreseeable

King v Commonwealth Flying into mountain with drugs, FMR no, not related at all

Rose v State FMR applies to enumerated in statute, felony must be assaultive to merge

State v. Canola FMR doesn't apply to killings by third parties. When a third party (not a D or co-felon) kills, that third party isn't acting as D's agent or in furtherance of the felony but is trying to thwart the felony. Jewelry store owner shot cofelon, other felon not responsible

Defenses

Case in Chief Defense doubt about element of conviction

Affirmative Defense I did it but Justification = D claims D did the right thing or took the most appropriate action under the circumstances or Excuse = D's actions excused for some reason (e.g., insanity) à excuses are personal to the actor

Crime-specific defenses -Statute defines some kind of defense specific to that crime.

Justification Defense- SELF-DEFENSE

Valid claims of **self-defense** require that:

D was threatened with an **imminent** threat of unlawful force,

The force D used was **necessary** to repel the threat, and

The force used was **proportionate** to the threatened force

The belief of imminent threat isn't required to be correct, just reasonable

Fact-intensive analysis

Questions about cultural bias

Case in Chief Defenses:

Unconsciousness (*Decina*), Mistake of Fact (*Morissette* & *Navarro*)Specific Intent, General Intent, or Strict liability, Mistake of Law (*Marrerro*), Impossibility (*Thomas*), Affirmative Defenses:
Justification (D claims he did the right thing), Self-defense (*Goetz*, *Simon*, *Stewart*), Defense of others (*Young*), Defenses of habitation & property, Necessity (*Schoon*, *Hutchins*), Excuse (D's actions excused for some reason), Voluntary Intoxication (*Atkins*), Duress (*Contento-Pachon*, *Hunter*), Insanity (*Freeman*), Crime-Specific Defenses (e.g., Abandonment/Renunciation), Abandonment (*Latraverse*), Self Defense (Goetz, Simon, Stuart)

People v. Goetz 4 youths on subway, guy went nuts shooting**.** Must believe another person is about to use deadly force. Subjective belief is not enough

State v. Simon guy kills Asian neighbor because of king fu. Deadly force for self defense requires an objective belief not subjective.

State v. Stewart abused wife shoots sleeping husband. Self defense not applicable because of no immediate threat.

Defense of Others (Young)

People v. Young guy mistakenly thought he was helping a youth with 2 guys restraining him. Act at own peril. Can be used only if the victim could have legally used self defense (not here)

Necessity (Schoon, Hutchins)

United States v. Schoon Necessity defense requires Ds to show they: "(1) were faced w/ a choice of evils & chose the lesser evil; (2) acted to prevent imminent harm; (3) reasonably anticipated a direct causal relationship b/t their conduct & the harm to be averted; & (4) had no legal alternatives to violating the law." Thus, the necessity defense is inapplicable to indirect civil disobedience cases

Commonwealth v. Hutchins guy smoking weed for pain. The necessity defense may be used "if the harm sought to be avoided far exceeds the harm resulting from the crime committed." The defense must also meet the requirements: (1) D is faced w/ a clear & imminent, not debatable or speculative, danger; (2) D can reasonably expect that D's action will directly abate danger; (3) no effective legal alternative exists; & (4) the Legislature has not acted to preclude the defense by a clear & deliberate choice.

Duress (Contento-Pachon, Hunter)

United States v. Contento-Pachon guy had family kidnapped swallowed balloons of drugs (YES, DURESS/ NO, NECESSITY)

Rule 1: D must prove following elements to use the duress defense: (1) an immediate threat of death or serious bodily injury; (2) a well-grounded fear that threat will be carried out; (3) a lack of reasonable opportunity to escape threatened harm; & (sometimes 4) D turned self in to authorities after attaining position of safety.

Immediacy = threat of injury was present, immediate, or impending (veiled threats of future unspecified harm insufficient).

Escapability = D had no reasonable opportunity to escape.

A D acting under a (2) well-grounded fear of (1) immediate harm (3) w/o opportunity to escape may assert a duress defense if there is a triable issue of fact re: whether D took an opportunity to escape the threatened harm by (4) submitting to authorities at the first reasonable opportunity.

Rule 2: Duress is compelled by humans, not physical forces of nature. Necessity is compelled by the latter & when D acts in the interest of general welfare**.**

State v. Hunter Although KS has codified the common law rule that one could not assert duress defenses to murder, the duress defense may be used to defend against "killings done by another during the commission of some lesser felony." To use the duress defense, the coercion "must be present, imminent, & impending, & of such a nature as to induce a well-grounded apprehension of death or serious bodily injury" if an act is not done. It must be continuous & w/o reasonable opportunity to escape.

Facts: D was hitchhiking & was picked up by Remeta & two others. R gave D a broken gun, which D repaired. D asked to be dropped off & R talked about another hitchhiker he wished he had killed & described R's previous murders. When

pulled over by P.O. Albright, R shot A. Then all 4 drove to a grain elevator, where R shot Christie & took two others hostage, who R later killed.

Issue: May a D use the defense of duress when charged with felony murder? Yes.

Insanity

United States v. Freeman The *M'Naghten* and "irresistible impulse" tests are too rigid, narrow, & outdated; *Durham* test is too vague. Adopts MPC Section 4.01 (excusing Ds who "lack substantial capacity either to appreciate the wrongfulness of [their] conduct or to conform [their] conduct to the requirements of the law") as best option, providing juries with a workable standard.

MPC 4.01 – "A person is not responsible for criminal conduct if at the time of such conduct, as a result of a mental disease or defect, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law."

Facts: D sold heroine on two occasions to undercover cop & claimed defense of insanity. D's expert said he was both an addict & alcoholic, had suffered 3 "knockouts" while "prize fighting," had toxic psychosis (leading to not knowing where he was or what he was doing, delusions, convulsions, hallucinations, & amnesia) & didn't know right from wrong in the sense of the social implications of selling heroine. Prosecution expert acknowledged "some limitations" in D's ability to know right from wrong but not to degree of the *M'Naghten* test.

Issue: Should the trial court have applied the *M'Naghten* test to determine whether D could claim an insanity defense? No.

Attempts – Inchoate Crimes (offenses that impose liability for acts done before the crime fully occurs

Crimes where the actor has some kind of mens rea and commits voluntary act towards the attainment of his criminal goal but it's incomplete

Types of Inchoate Crimes:

Attempt: conduct with the intent to commit a crime but without actually completing it.

D must have the same mens rea called for by the target crime itself.
D must have a mens rea of specific intent as to the attempt
D cannot be liable for a reckless attempt or a negligent attempt.
D must intend the circumstances.
EX; Merger, renunciation, impossibility.
RENUNCIATION ("TAKE IT BACK"):
The target crime must include as a material element either a result or a circumstance as opposed to mere conduct, because if the crime is merely conduct, once the defendant does it, he or she obviously can't take it back.

The renunciation must be voluntary; if the defendant gives up on the crime because it is more difficult than expected, that isn't voluntary.

The renunciation must be complete and final and not simply a matter of waiting for a better time.

People v. Rizzo looking to rob guy but incompetent “Dangerous proximity to success” (Act is so near to the result that danger of success is very great.) The law considers those acts only as tending to the commission of the crime which are so near to its accomplishment that in all reasonable probability the crime itself would have been committed but for timely interference. Acts must be done BEFORE Issue: Were D’s acts in preparation for robbery or an attempt to commit robbery? (Were D’s acts sufficient to satisfy the actus reus for the crime of attempted robbery?) **No.**

NOTE: RECKLESSNESS should be the default mens rea if not otherwise specified. (MPC ONLY)

The U.S. Supreme Court has suggested that KNOWLEDGE should be the mens rea requirement for federal laws that do not otherwise specify mens rea.

People v. Staples office above bank almost complete with burglary prep. “ABANDON” FAIL. Attempt occurs when D’s acts unequivocally manifest criminal intent & = commencement of the consummation.

Issue: Was there sufficient evidence that D’s acts went beyond mere preparation and constituted an attempt to burglarize? Yes.

Unequivocality test: D’s conduct alone unambiguously manifested D’s criminal intent.

Once the acts of a defendant go beyond preparation and reach the point where they constitute an attempt, the defendant can no longer raise the defense that he abandoned his attempt.

Substantial Steps Test: a defendant is deemed to have attempted to commit a crime if they have taken a "substantial step" towards completing the crime, but for some reason, the crime was not completed. The substantial step must be more than mere preparation and must be a clear indication of a firm intent to commit the crime.

- searching for the victim

- soliciting an innocent party to perform an element of the crime

- scoping out the crime scene

Abandonment: when a person who has taken substantial steps towards committing a crime voluntarily and completely renounces their criminal intent, and takes steps to prevent the commission of the crime

available to defendants who can show by a preponderance of the evidence that they completely and voluntarily renounced their criminal purpose.

State v. LaTraverse à MPC Sec. 5.01: (1) A person is guilty of an attempt to commit a crime if... he (c) purposely does or omits to do anything which... constitute[s] a substantial step in a course of conduct planned to culminate in his commission of the crime. (2) Conduct shall not be held to constitute a substantial step... unless it is strongly corroborative of the actor's criminal purpose.

Sec. 5.10(4): affirmative defense of abandonment when "circumstances manifest a complete **and** voluntary renunciation of [D's] criminal purpose."

Facts: D out on bail b/c sold stolen cars to undercover det. Lombardi. D drove by L's house & parked across street. L called for back-up, & D left as backup approached. When backup stopped D, he had in car gasoline, rag, matches, baseball bat, wire coat hanger & a note reading "Hi Sal, know (sic) it's my turn asshole."

Issues: (1) Did D commit acts sufficient to constitute an attempt? Yes. (2) Did D establish the defense of abandonment? No.

People v. Harris 2 mental states are required for the crime of attempt: (1) the intent to commit the acts which constitute the actus reus of the offense, and (2) the specific intent to commit the target offense. In the case of a result crime like murder, you must have intended to commit the crime of murder (you must have intended to cause a result of the social harm of death) in order to be found guilty of attempted murder.

Facts: D convicted of attempted murder of girlfriend who he pulled a gun on. When she drove away, D shot out back window of car. D objected on jury instruction that murder had a mens rea of intent to kill or do great bodily harm.

Issue: Involving a charge of attempted murder, was the trial court's decision to give the jury an instruction defining murder improper? Yes.

HYPO: D plants a bomb in classroom w/ specific goals of killing V. D knows the bomb is powerful enough to kill all in building. If bomb kills all, is D guilty of murdering V?

Yes – it is his conscious object to kill V.

Is D guilty of murdering everyone else in the building?

Yes – D has knowledge to a virtual certainty, plus deaths are natural & probable consequence of bomb.

If the bomb malfunctions, is D guilty of attempted murder of V?

Yes, because it was his conscious object to kill V.

State v. Hinkhouse Dude knowingly had HIV positive sex, A person commits attempted murder when he or she attempts, w/o justification or excuse, intentionally to cause the death of another human being. “To act ‘intentionally’ is ‘to act with a conscious objective to cause the result or engage in the conduct so described.’” Here, to sustain an attempted murder conviction, the prosecutor needed to prove that D’s conscious object was to cause the death of his sexual partners.

Issue: Was the evidence sufficient to prove that D had the mental state necessary for attempted murder? Yes.

Impossibility (legally, factually, inherently)

Legal; "pure" or "true" legal impossibility because there is no law to be broken or crime on the books to charge the defendant.

Factual; D intends to commit a crime but factual circumstances outside of the defendant's control prevent the crime from being committed.

Inherent; D genuinely intends to commit a crime and engages in conduct based upon a genuine belief that the desired result will occur, D can be charged with attempt even though the intended result is inherently impossible or extremely unlikely.

The defense of impossibility
CL traditionally recognized 2 types of impossibility- factual and legal.
Scholars have identified 4 types
Factual impossibility

D is mistaken about a fact that makes it impossible for him to commit the target offense. If the facts were as D believed them to be, he would’ve succeeded committing the target offense. **Factual impossibility is NOT an defense to attempt.**
E.g. D reaches into someone’s pocket to steal their wallet but the pocket is empty.
E.g. person aims what he thinks is a loaded gun at someone and pulls the trigger but it’s empty. Can still be charged with attempted murder.
Intended crime is impossible to accomplish because of a physical impediment unknown to D; NOT A DEFENSE. It’s a lucky coincidence that the social harm was averted, but D still intended to commit the crime, and moved forward based on that intent. Inherent impossibility (aka inherent factual impossibility)
E.g. X is a conjuror and charges D $450 to place a death curse on V. this is inherent impossibility. The crime of murder is real, but the means pursued by D is inherently unlikely to result in the prohibited outcome that crim prosecution seems like a waste of time. Recognized by the cts as a defense to a charge of attempt.
D, w/intent to commit crime, chooses means of committing crime that is virtually certain to fail. Pure legal impossibility- E.g. driver turns on red, thinking this

is illegal. Gets pulled over for broken taillight. If turning on red is legal in this jd, driver has pure legal impossibility defense to a charge of attempted turning on red. Crime does not exist in this jd, so it's impossible to commit. Recognized as a defense to a charge of attempt. D's intended act isn't criminal, but D believes it is criminal. Hybrid legal impossibility
D's intended act is criminal, but D is mistaken about the legal status of some factor relevant to the offense in question.
E.g. D who buys a fridge from someone while D thinks it's a stolen fridge, but it actually wasn't stolen. Since the crime of receiving stolen prop requires that the prop is stolen prop, D's mistake re the legal status of the prop makes this hybrid legal impossibility. Could be found not guilty of attempting to receive stolen prop.
D's goal is illegal, but D can't commit crime due to mistake of fact re: legal status of a factor to offense. E.g. D shoots at stuffed deer, believing it is alive.
MPC rejects the defense impossibility.
United States v. Thomas raped a dead woman, Model Penal Code 5.01: (1) Def. of attempt. A person is guilty of an attempt... if, acting w/ the kind of culpability otherwise required for commission of the crime, he: (a) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or(b) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or w/ the belief that it will cause such result, w/o further conduct on his part..."Issue: Was Court correct to set aside Ds' convictions for attempt to commit rape & conspiracy to commit rape? (Should the defense of impossibility– a special defense to the crime of attempt– be recognized?) No.
Categories of Impossibility:
Pure legal impossibility: D's intended act isn't criminal

Hybrid legal impossibility: D's goal is illegal, but D can't commit crime due to mistake of fact re: legal status of a factor relevant to offense (e.g., D shoots at stuffed deer, believing it is alive)

Factual impossibility: intended crime is impossible to accomplish b/c of physical impediment unknown to D; **NOT A DEFENSE** (e.g., D attempts to steal from empty pocket)

Inherent factual impossibility: D, w/ intent to commit crime, chooses means of committing crime that is virtually certain to fail

Accomplice Liability

For felonies:

(1)Principal in the 1st degree (P1) à the person(s) who actually commits the crime or uses an innocent instrumentality to do so (MASKED ROBBER)

(2)Principal in the 2nd degree (P2) à the person(s) who assists P1 and is present at scene of the crime (GUY HOLDING THE DOOR, HELPER)

(3)Accessory before the fact à the person(s) who assists P1 but is NOT present at scene of the crime (PROVIDES ASSISTANCE BEFOREHAND)

^^^ALL CAN BE HELD LIABLE.

(4)Accessory after the fact à the person(s) who helps P1 avoid arrest, trial or conviction (PROVIDES A HIDEOUT)

^NOT LIABLE FOR THE ACT COMMITTED.

Misdemeanors: all considered principals

Accomplice liability has both an actus reus requirement and a mens rea requirement:

Actus reus requirement: To satisfy the actus reus requirement for accomplice liability, an accomplice must ASSIST the principal in COMMISSION OF THE CRIME. Some assistance, no matter how trivial, is required. (i.e. supply, gun, car, even digital help, EVEN encouragement/emotional support---Mere presence is insufficient for accomplice liability (Pace v State)

Omitting to do something that you have a legal duty to do= actus reus met=

Mens Rea requirement: Like the law of attempt and conspiracy, the law of complicity has a dual intent requirement. As a general rule, to be held liable as an accomplice, the D must have:

The intent to do the acts that assist/help the principal in the first degree in the commission of a crime (EVEN IF NOT KNOWING), and

The intent that the principal in the first degree commit that crime (purpose is needed rather than knowledge).

There’s no causation requirement for a person to be held liable as an accomplice. As long as the accomplice assists the principal in the first degree and does so with the requisite mens rea, the accomplice may be found criminally liable even if the principal in the first degree would have committed the crime with or without the accomplice’s assistance

Keep in mind à Accomplice liability is a derivative. The D who satisfies both the actus reus and the mens rea requirements for complicity isn’t guilty of “complicity” – rather, the D is guilty of the substantive crime, the crime with which the principal in the first degree has been charged.

Innocent Instrumentality rule: determine the criminal liability of an innocent party whose property or instrumentality was used in the commission of a crime. Under this rule, an innocent owner of the property or an instrumentality used in the commission of a crime cannot be held criminally liable for the actions of the person

who used their property, as long as the owner did not know or consent to the illegal use of their property.

A person who, with the requisite mens rea, uses an innocent instrumentality (e.g., a dog or a human agent like a child or mentally disabled person) to commit crime is also considered the principal in the first-degree (Knoller Case)

Ex. D tells his 5-year-old to “go get Daddy’s umbrella” when the umbrella really belongs to someone else (D = P1. The child is just an innocent instrumentality)

Actus reus requirement;_Actus reus is satisfied if the accomplice assists the principal in the 1st degree in the commission of the crime. Mere presence ordinarily is insufficient for accomplice liability.

Mens rea requirement: Dual intent requirement: To be held liable as an accomplice, D must have:

> 1) the intent to do the acts that assist the principal in the first degree in the commission of a crime, and 2) the **intent that the principal** in the first degree commit that crime.

Pace v. State guy driving, picked up robbing hitchhiker. The actus reus for accomplice liability is some affirmative conduct (acts or words from which a reasonable inference can be drawn) that the accomplice’s purpose was to effect the commission of the crime. Negative acquiescence is NOT enough.

State v. Foster girlfriend robbed and raped, A had knife from D1 Under the doctrine of dual intent, the mens rea for accessorial liability (AL) for crimes of negligence & recklessness requires that A intends (1) to assist & (2) that P1 commit target offense or at least have the mental state sufficient for commission of crime. AL is different from attempt & conspiracy, b/c (1) acting as an accessory is not a separate crime, & (2) AL requires only the mental culpability required by statute for commission of a crime.

Wilson v. People feigning accomplice of robbery for watch. One who participates in a felony as a feigned accomplice is not criminally liable, and he need not take an officer of the law into his confidence to avoid an imputation of criminal intent.

Derivative nature of AL (accomplice liability)

Rule 1: An A (P2 or ABTF)(accomplice before the fact) can only be convicted of crime that P1 has committed (or some lesser offense).

Exception: An A can be convicted of a more serious homicide than P1 if their mental states were different.

E.g. say A knows that V bikes home every day on same route. A takes B out drinking and sends B to drive home, which requires him to go on the route that V takes. B runs over V and kills him.

B can be charged with involuntary manslaughter because his mental state was criminal because he was intoxicated and he has actus reus.

But A can be charged with first degree murder because he had the necessary criminal intent and the actus reus technically.

Rule 2: If P1 is acquitted of charged offense, then all As must be acquitted of same crime

Exception: If P1 is acquitted of the charged offense because of an excuse (e.g. duress or insanity), P1's accomplices can be convicted of that crime.

Roy ("accomplice") v. United States UC went on gun buy and got robbed. An accessory is liable for any criminal act which in the ordinary course of things was the natural and probable consequence of the crime. Natural means in accordance with or determine by nature. A natural consequence is one within normal range of outcomes.

Solicitation: act of asking, encouraging, or requesting another person to commit a crime. Complete once the solicitation has occurred, regardless of whether the crime is actually committed or not. The person who solicits the crime can be charged with the crime of solicitation, even if the person who was solicited does not actually commit the crime.

- When D invites, requests, commands, hires, or encourages another to commit a crime
- Takes the place of "attempted conspiracy," which doesn't exist.
- Actus Reus = inviting, requesting, commanding, hiring, or encouraging of another to commit a crime.
- Two mental states for solicitation:
- D must intend the actus reus of solicitation
- D must have the specific intent that D commit the charged offense.
- If the solicitation is successful, it merges with the conspiracy.

Conspiracy: involves an agreement between two or more people to commit a crime, along with an overt act in furtherance of that agreement. Both the agreement and the overt act in furtherance of the agreement **must be proven for the crime to be complete.**

- Actus Reus of conspiracy: (1) Agreement to commit a crime (doesn't have to be in writing; can be inferred from the circumstances), & (2) Overt act in furtherance of the conspiracy
- Overt act = any act, no matter how trivial, performed by any one co-conspirator, in furtherance of the conspiracy.

- Lower standard than for actus reus requirement (attempt).
- Conspiracy prosecution can be brought in any jurisdiction where an overt act occurred, or the agreement was formed.

- Mens Rea of conspiracy

- In jurisdictions that incorporated the common law, conspiracy is usually considered a specific intent crime. The required specific intent involves two elements: (1) the intent to enter into an agreement; and (2) the intent to commit, or aid in the commission of, the act or acts constituting the target crime (People v Swain)
- Under Sec. 5.03 of the **MPC** à to be convicted of conspiracy, the actor must have the purpose to promote or facilitate the target offense or to aid others in committing, attempting, or solicitating the action that constitutes the crime

NOTE: Unlike solicitation, conspiracy requires an agreement to commit a crime, rather than just the encouragement or request to do so.

People v. Swain Drive by shooting. A conviction for conspiracy to commit murder requires a finding of intent to kill and cannot be based on a theory of implied malice (e.g., depraved heart murder as in this case).

NOTE: **Because conspiracy is a specific-intent** crime, it would be illogical to find the defendant guilty of conspiracy to commit murder without finding that the defendant possessed the specific intent to commit murder. Accordingly, a conviction of conspiracy to commit murder must be based on a finding of intent to kill, not on an implied-malice theory.

People v. Lauria Answering service for hookers. Suppliers of goods/services guilty of conspiracy must: (1) know of illegal use, & (2) intend to further that use. Jury can infer intent from D's knowledge of illegal use: (1) if D has acquired stake in venture (D charged customer [C] inflated price); (2) no non-criminal use for goods/services exists; (3) C's volume of business w/ D is grossly disproportionate to any legitimate demand. Nature & seriousness of offense also relevant (e.g. knowing goods/services being used for misdemeanor doesn't establish intent to participate in the misdemeanor).

Pinkerton Doctrine: common law doctrine; rejected by MPC

a co-conspirator in a criminal conspiracy can be held responsible for any additional crimes committed by another member of the conspiracy that were in furtherance of the conspiracy and were foreseeable.

Ex: If D1 & D2 agree to rob a bank and D2 kills a teller, D1 is liable for murder b/c killing was reasonably foreseeable consequence of agreement to rob bank. But if D2 were to rape the teller, D1 not be liable for rape b/c rape, which is not a foreseeable consequence of bank robbery.

Co-conspirators are liable if a reasonable person would have foreseen that crime

A conspirator may be held liable for a crime committed by another member of the conspiracy even if that other crime was not part of the original agreement as long as the unintended crime was: (1) In furtherance of the conspiracy, (2) Within the scope of the conspiracy, and (3), a reasonably foreseeable consequence of the original agreement